Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 739 of 2001
(Old No. 934 of 1984)

Jagdish Prasad Singh
S/o Chhatra Singh
R/o Village Dugadda,
District Pauri Garhwal.

…… Appellant

Versus

The state …….. Respondent

Ms. Ravindra Singh Bisht, Amicus Curiae for the appellant.
Mr. G.S. Sandhu, A.G.A. for the respondent State.

Hon'ble Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374(2) of the code of criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the judgment and order dated 02.03.1984, passed in Sessions trial No. 17 of 1983, by learned Sessions Judge, Chamoli, whereby appellant Jagdish Prasad Singh has been convicted under Section 394 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.) and is sentenced to undergo rigorous imprisonment for a period of five years.

2) Heard learned counsel for the parties and perused the entire record.

3) Prosecution story, in brief, is that on 03.05.1983, P.W. 2 Smt. Kudali Devi, resident of village Kimoli, Patwari Circle Panti, Tehsil Karanprayag, District Chamoli, had gone to collect dry leaves in the adjoining jungle. At about 5:00 P.M., appellant Jagdish Prasad Singh came from behind and voluntarily caused knife injuries on the person of Kudali Davi. He attempted to forcibly take out her silver Hansuli (Necklace). On this, P.W. 2 Kudali Devi, raised alarm and shouted for help. On hearing the alarm, P.W. 5. Darwan Singh, P.W. 4 Bhupal Singh, Umrao Singh and others rushed to the spot. They saw that Kudali Devi was lying injured. On this, Umrao Singh and others witnesses chased the appellant. While, being chased appellant Jagdish Prasad Singh fell down on the slope of a hillock and was caught by the witnesses. The witnesses took the appellant to P.W. 1 Narain Singh, Village Pradhan, who called the ward boy of nearby local Ayurvedic Dispensary and got provided first aid to injured Kudali Devi. On 04.05.1983 (the next day) P.W. 1 Narain Singh, went to village Panti, which was at a distance of 11 kilometers to lodge the First Information Report (Ext. A –1) of the occurrence. A check report (Ext. A –2) was prepared on the basis of the First Information Report and the crime was registered by the revenue police under Section 392/307 of I.P.C., against the appellant. (In Uttaranchal hills, in certain area, revenue officers are given police powers). P.W. 6 Mr. Gopal Dutt Nautiyal Supervisory Kanoongo, investigated the crime. He interrogated the witnesses and prepared the site plan (Ext. A –4). Injuries on the person of Dudali Devi were got examined by Dr. J.C. Dimri, on

05.05.1983, who recorded following injuries on the person of the injured:

(i) ***Incised wound of size 3 cm X 1½ cm X ½ cm with margins eroded. Serum discharge from the wound and blood clot on the right side of the scalp on the occipital bone 10 cm away from the right ear existed.***

(ii) ***Wound of size 4 cm X 1 cm X 2 ½ cm with serum discharge with margins not well defined and blot clot on the right side of the scalp of parietal bone 7 cm away from right ear.***

(iii) ***Wound of size of 3 cm X 3 cm X ½ cm with margins not well defined and serum discharge on the occipital bone 5 cm away from hair-tuft.***

4) On completion of the investigation, the Investigating Officer submitted charge sheet against the accused appellant jags\dish Prasad Singh, for his trial relating to offence punishable under Section 392 / 307 of I.P.C. It appears that the Magistrate concerned, after giving necessary copies to the accused, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions, for trial. Learned Sessions Judge, after hearing the prosecution and the defence framed charge of offence punishable under Section 394 / 397 of I.P.C., to which the accused / appellant pleaded not guilty, and claimed to be tried. On this prosecution got examined P.W. 1 Narain Singh (informant); P.W. 2 Kudali Devi (injured); P.W. 3

Indra Singh (eyewitness); P,.W. 4 Bhupal Singh (another eyewitness); P.W. 5 Darwan Singh (yet another eyewitness) and P.W. 6 Gopal Dutt Nautiyal (Investigating Officer).

5) All oral and documentary evidence was put to the accused under Section 313 of the Cr.P.C., in rely to which the accused / appellant has stated that he has been falsely implicated in the crime, due to enmity. He has further stated that, in fact, on the day of incident, it was he who was attacked by some miscreants and was looted of Rs. 7,000/-. The accused / appellant has further stated in his statement under Section 313 of the Cr.P.C. that injuries was caused to him by the miscreants. After going through the evidence on record and, hearing the parties, the Sessions Judge found accused Jagdish Prasad Singh guilty of offence punishable under Section 394 of I.P.C., and after hearing him on sentence, sentenced him to rigorous imprisonment for five years. Aggrieved by said judgment and order dated 02.03.1984, the convict preferred this appeal before Allahabad High Court in the year 1984, from where the same is received by this Court by way of transfer, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

6) Before further discussions, it is pertinent to mention here, that from the medical report (Ext. A –8) on record, it is clear that the accused / appellant has suffered as many as 17 injuries, which was recorded by Dr. J.C. Dimri, on 06.05.1983, at about 7:50 A.M. The injuries recorded by

the Medical Officer, on the person of the accused / appellant, are as under:

(i) Linear wound of size of 4 cm X ½ cm X 3 cm with everted margins and sharp edges serum discharge with blood clot on the occipital bone, 13.5 cm away from the right ear.

(ii) Linear wound of size of 2 cm x ½ cm X 3 cm with not well defined margins and blood clot and serum discharge on right ear lobule 4 cm away from right angle of mandible.

(ii) An elliptical lacerated wound of size of 6 cm X 3 cm X 1½ cm with everted margins and pus on the occipital bone 14 cm away from right ear.

(iii) Incised wound of size of 1 cm X 1½ cm X 3 mm with everted and well defined margins and blood clot. Serum and painful discharge with tender swelling, 6 cm away from the right angle of mandible existed.

(iv) Bruise of size of 11½ cm X 3 cm of livid red colour. Painful and tender swelling existed on the right said of back, 9 cm away from right scapula.

(v) Bruise of size of 11½ cm X 3 cm of livid red colour. Painful and tender swelling existed on the right said of back, 9 cm away from right scapula.

(vi) Abrasion of size of 6 cm X 2 cm of livid red colour with painful and swollen surroundings on the right side, 6 cm away from right scapula.

(vii) Abrasion of size of 5 cm X 2 cm of livid red colour on the right side of back, 4 cm away from right scapula.

(viii) Abrasion of size of 2½ cm X 1 with blood clot and painful tender surrounding on the right side 2 cm away from thorosic vertebra No. 10.

(ix) Abrasion of size of 1 cm with linear blood clot and painful and tender surrounding on right side 4 cm away from thorasic vertebra No. 9.

(x) Abrasion of size of 1 cm with linear blood clot and painful tender surrounding on left side, 5 cm away from lumber three spinal.

(xi) Incised wound of the size of 1 cm X 1½ cm X 3 cm with not well defined margins and blood clot on the left side of humeroc, 12 cm away from the shoulder.

(xii) Abrasion with 2 cm blood clot, painful and tender on the dorsum hand on the left side 6 cm away from the elbow.

(xiii) Abrasion of 1 cm X 0.5 cm with painful and tender blood clot on the dorsum hand on the left side 10 cm away from elbow.

(xiv) Abrasion of size of 1 cm X 1 cm with painful and tender blood clot on the left side of the chest, 2 cm away from the zipluster mum.

(xiv) Abrasion of size of 1 cm X 1cm with painful and tender blood clot on the left side, 7 cm away below left nipple.

(xv) Odemotous painful and tender swelling on the left thigh in an area of 4 cm X 4 cm, 10 cm away from left iliac bone.

(xvii) Painful and tender swelling on the chest in an area of 5 cm X 6 cm, 2 cm above right nipple.

(xviii) Complainant of pain over whole body but there was no other physical sign of external injuries.

7) P.W. 1 Narain Singh is a formal witness, who has proved the lodging the First Information Report (Ext. A –1). This witness has also stated that on 05.05.1983, it was Darwan Singh, who came to him and gave the information of robbery. P.W. 2 Kudali Devi, the injured witness, has stated that on the day of incident she was attacked from behind by someone and she got unconscious. P.W. 3 Indra Singh, resident of the village Kimoli, states that on the day of incident he chased the accused / appellant and apprehended him with the help of Darwan Singh and Umrao Singh. P.W. 4 Bhupal Singh, also resident of village Kimoli, states that on hearing alarm from Kudali Devi when he went towards the spot he saw that accused / appellant while fleeing from the place of occurrence fell down from a hillock and got injured. P.W. 5 Darwan Singh, states that Smt Kudali Devi was attacked by knife and when she raised an alarm, he along with other

witnesses went to the spot and chased the accused / appellant and they finally succeeded in apprehending him.

8) Mr. Ravindra Singh Bisht, Amicus Curiae assisting the Court on behalf of the appellant argues that accused / appellant has been convicted under Section 394 of I.P.C., and it is not shown what was the property robbed by him, on recovered from him. I agree with the argument of learned Amicus Curiae that the prosecution has nowhere stated that silver Hansuli (Necklace) was actually robbed. What has been stated by Kudali Devi was this that she was attacked and an attempt to snatch her silver Hansuli was made. No property is said to have been robbed by the witness, nor was anything recovered from the accused, as such, his conviction under Section 394 of I.P.C., on the face of it is bad in law. Normally, every village woman wears a silver Hansuli (Necklace), and it is very uncommon that someone would come in the jungle to rob the silver Hansuli (Necklace) of a woman.

9) Learned A.G.A. pointed out to this Court that accused / appellant was arrested at the spot soon after the incident, as such, the trial court has rightly believed the prosecution story. But 17 injuries found on the person of the appellant, as mentioned above, read with the defence story, which has been given by the accused / appellant in his statement recorded under Section 313 of the Cr.P.C., creates a reasonable doubt as to the truthfulness of the prosecution story. Prosecution has been unable to explain as to how the injury Nos. 1, 2, 4 and 11, out of the 17

Injuries, which appears to have been caused by a sharp edged weapon, was received by the accused / appellant. Other injuries can be said to have been caused by falling from a hillock but the incised wound and linear wound, recorded above, are not explained by the prosecution.

10) On behalf of the appellant it is submitted by learned Amicus Curiae that there was cross First Information Reports from both the sides, and on the First Information Report of the accused / appellant, final report was submitted by the police. It is further argued on behalf of the appellant that had there been any attempt on the part of the appellant to snatch the Necklace on Kudali Devi, there should have been some injury mark on her neck. No such injury was found on the person of Kudali Devi on her neck.

11) There is no eyewitness of actual commission of crime by accused / appellant. What the witnesses P.W. 3 Indra Singh, P.W. 4 Bhupal Singh and P.W. 5 Dabwan Singh state is that they reached the spot on hearing alarm raised by Kudali Devi. After considering all facts and circumstances, as discussed, including the delay in lodging the First Information Report, it cannot be said that the prosecution has been successful in proving the charge of offence punishable under Section 394 of I.P.C., beyond reasonable doubt against the accused / appellant Jagdish Prasad Singh. In the circumstances, the appellant is entitled to the benefit of reasonable doubt.

12) For the reasons as discusses above, this appeal is allowed. The impugned judgment and order dated 02.03.1984, passed by the learned Sessions Judge, Chamoli, in Sessions Trial No. 17 of 1983, is set aside. The conviction and sentence of the appellant under Section 394 of I.P.C., is also set aside. He is acquitted of said charge. He is on bail. He need not to surrender. His bail bonds are cancelled and sureties are discharged.

(Prafulla C. Pant, J.)

Dt. October 09, 2006.
H. Negi